

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## VINCENT DANIEL HOPPER.

Plaintiff,

V.

G. WIGEN WARDEN NORTHWEST  
DETENTION CENTER *et. al.*,

## Defendants.

Case No. C05-5680RBL

ORDER ON PLAINTIFF'S MOTION  
TO STAY, AND MOTION TO  
TRANSFER THE CASE, AND ON  
DEFENDANT'S MOTION TO  
WITHDRAW THE FIRST MOTION  
TO DISMISS

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). The plaintiff has been granted leave to proceed *in forma pauperis*. Plaintiff seeks injunctive relief and damages in this action. He challenges legal library access policies for detainees such as himself. (Dkt. # 1). Before the court is plaintiff's motion asking to stay the case and continue defendants motion to dismiss. (Dkt. # 69), Plaintiff also asks this action be transferred to Judge Burgess. (Dkt. # 70).

Defendants filed two motions to dismiss. (Dkt. # 50 and 67). Defendants now ask that the first motion to dismiss be withdrawn. (Dkt. # 73). Defendant's counsel states that a motion to withdraw the first motion to dismiss was signed May 1st, 2006, after Mr. Hopper was returned to

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1 Federal custody from local law enforcement. (Dkt. # 73). The motion was inadvertently not filed  
2 until after the court had issued a Report and Recommendation. (Dkt. # 71).

3 Defendant's motion to withdraw the first motion to dismiss is **GRANTED. The Report and**  
4 **Recommendation addressing the first motion, (Dkt. # 71), is withdrawn.**

5 The court was perplexed when a second motion to dismiss was filed as Fed. R. Civ. P 12 (g)  
6 normally limits a party to one motion to dismiss. The fact that a motion to withdraw was prepared  
7 but inadvertently not filed explains the filing of a second motion to dismiss.

8 Plaintiff's motions are **DENIED**. Contrary to plaintiff's assertions the question raised in  
9 defendant's second motion to dismiss is a question of law and not a mixed question of law and fact.  
10 A motion to dismiss tests only the sufficiency of the complaint and the legal question that has been  
11 raised is whether the named defendants can be sued in their official or individual capacity for  
12 damages or injunctive relief.

13 Plaintiff's second motion, to transfer the case to Judge Burgess, is also **DENIED**. If plaintiff  
14 believes this action is duplicative or similar to other litigation he currently has pending before Judge  
15 Burgess, a motion to consolidate may be appropriate. The court does not normally shift a case to  
16 another Judge without good cause.

17 Defendant's motion to dismiss will be dealt with separately as it is a dispositive motion which  
18 requires a Report and Recommendation.

19 The Clerk is directed to send a copy of this Order, to plaintiff and counsel for defendants and  
20 remove docket numbers 69, 70, and 73 from the court's calendar.

21  
22 DATED this 1<sup>st</sup> day of June 2006.

23  
24 */S/ J. Kelley Arnold*  
25 J. Kelley Arnold  
26 United States Magistrate Judge  
27  
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